Before the Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)	
	)	
	)	
Policy and Rules Concerning the	)	
Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
Universal Service	)	
	)	
Implementation of Section 254(g) of the	)	
Communications Act of 1934, as amended	)	
	)	

Petition for Reconsideration

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Executive Summary

The Commission should determine that the rate integration provisions of Section 254(g) do not apply to CMRS. The rate integration (and rate averaging) provisions of Section 254(g) were explicitly intended by Congress to codify prior Commission policy which did not impose these requirements on CMRS. Since Congress intended that the Commission codify prior policy, and since that prior policy did not require CMRS carriers to provide services under an integrated schedule, Congress did not intend that the Commission now apply the rate integration rule to CMRS. And given the history of the rate integration rule and its purpose, it is far more logical to adhere to this past policy than to newly expand the rate integration rule to CMRS.

CMRS carriers are a separate class from the "providers of interstate, interexchange services" covered by Section 254(g). CMRS carriers provide different services and are subject to different regulations. For this reason, CMRS carriers were not even discussed in the Commission's Order implementing Section 254(g), nor in many other proceedings governing the interstate, interexchange marketplace. For sound public policy reasons, Congress, the Commission, and the industry understand that CMRS carriers are not the "providers of interstate, interexchange services" governed by Section 254(g).

Application of a rate integration rule to CMRS is unnecessary to protect subscribers in rural and offshore areas from paying unreasonable rates. The rate integration rule is premised on the practice of subsidizing local rates with revenues from interstate, interexchange services. Both the statutory provision and the Commission's policy it codifies are intended to protect customers in rural and offshore areas from paying the full burden of higher local exchange costs through long-distance rates which reflect the higher level of local subsidy in those areas. But CMRS service rates generally do not subsidize local exchange service, therefore rate integration for CMRS is unnecessary.

Application of the rate integration rule in the manner described in the Reconsideration Order is also unnecessary to flow through the benefits of competition in low-cost urban areas to customers in offshore markets. First, unlike wireline local exchange and access services, competition in the CMRS market is uniformly robust. Moreover, in order to "flow through" rate reductions from more competitive areas, CMRS carriers would be required to integrate rates across services, something which the Reconsideration Order states the rate integration rule does not require.

CMRS services do not always identify a separate toll charge but recover costs through airtime rates, often sold as a bundled package. Where a separate toll charge is identified, the end user's bill includes both that charge and an airtime rates. Thus, even if the toll charges are provided on an integrated basis, end user rates will vary, and local market conditions will still determine prices. But since CMRS competition in rural and offshore areas protects subscribers from unreasonable long-distance rates, there is no need to require CMRS carriers to integrate rates.

The Reconsideration Order's attempt to apply rate integration to CMRS is evidently an awkward fit. CMRS carriers do not offer separate and distinct "interstate, interexchange services" which could be provided under an integrated schedule. CMRS providers offer a single, unique mobile service that, as Congress recognized, operates without regard to state (or exchange) boundaries. Neither CMRS services nor CMRS networks are structured to recognize LEC telephone "exchanges." CMRS license areas often cover more than one local telephone exchange and CMRS services are often available at "local" calling rates throughout multi-state calling areas.

In some cases, CMRS carriers do effectively resell long distance by purchasing capacity from other carriers. But CMRS carriers do not uniformly separate out these costs from other costs – they may simply recover total costs from a monthly fee for bulk airtime. Thus, the Order's attempt to distinguish "CMRS interexchange services," from

"other interexchange services" offered by CMRS providers is unworkable at best and anticompetitive at worst.

The Commission states that the term "providers of interstate, interexchange services" is ambiguous, and should be interpreted to best further Congressional intent. Consistent with Congressional intent, the common understanding of the term, the purposes of the statute, and the complications of applying the rate integration rule to CMRS, the Commission should find that "providers of interstate, interexchange services" does not include CMRS providers.

Application of the rate integration rule across CMRS "affiliates" as described in the Reconsideration Order would lead to extraordinarily anticompetitive results. Requiring companies who are "affiliated" in one market, but are competitors or who are affiliated with other carriers in another market would require widespread price-fixing, be anticompetitive, and place CMRS carriers in an untenable legal position. And requiring CMRS carriers to charge separate integrated prices for "interexchange" calls would constrain their flexibility to respond to competition with unique service offerings. At a minimum, the Commission should revise its definition of "affiliate" to clarify that only "corporate families" of affiliates who share identical ownership are required to integrate their long-distance rates.

Also, if the Commission believes it must subject CMRS providers to Section 254(g), it should clarify the application of the term "interstate, interexchange service" to CMRS providers. In order to preserve these options for consumers and minimize the administrative burdens involved, AirTouch recommends that the Commission clarify that, for CMRS, the term "interstate, interexchange" refers only to those calls for which there is a separate discrete charge identified as a long-distance service charge. Thus, only where carriers choose to break out such a separate charge would that charge need to be uniform across a CMRS carriers different operating states.

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Petition for Reconsideration

AirTouch Communications, Inc. ("AirTouch") respectfully requests that the Commission reconsider its First Memorandum Opinion and Order in the above-captioned proceedings.[1] AirTouch is a wireless communications company with interests in cellular, paging, personal communications services, satellite, and other operations. The Reconsideration Order, for the first time, applied the rate integration policy to CMRS, holding that CMRS providers were required to "provide the interstate interexchange CMRS service on an integrated basis in all their states," although CMRS providers are not required "to offer interexchange CMRS and other interexchange services under one rate schedule."[2] The Reconsideration Order denied a petition for reconsideration filed by GTE asking that the Commission not require rate integration across affiliates.

INTRODUCTION

The Order misreads the scope of the applicable law to apply to CMRS, creates antitrust problems for wireless carriers and is likely to yield anticompetitive results. AirTouch believes that the Commission can revise its rate integration policy in a manner

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[1]In the Matter of Implementation of Section 254(g) of the Communications Act of 1934," First Memorandum Opinion and Order on Reconsideration, CC Docket No. 96-6 (released July 30, 1997)("Reconsideration Order").

[2]Id., para. 18.

which preserves the Act's intent to protect rural and offshore subscribers from unreasonable long-distance rates without thwarting CMRS competition.

BACKGROUND

Section 254(g) of the Communications Act, among other things, requires that a provider of interstate interexchange telecommunications services provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State. This Section is explicitly intended to codify pre-existing Commission policy that had been informally adopted through individual decisions (primarily review of Section 214 applications) regarding service by LECs, IXCs, and satellite common carriers to offshore points, e.g., Alaska, Hawaii and Puerto Rico.[3] The Commission's policy required services to offshore subscribers to be rated under the same tariffed schedule of rates and mileage bands offered to subscribers in the contiguous 48 states, thus "integrating" offshore subscribers into the domestic rate plan.[4] This policy was intended as part of the existing goal of encouraging universal service and affordable rates through implicit subsidies from long-distance service revenues.[5]

At the time this policy was adopted, the Bell System had not yet been divested and long-distance services were provided almost exclusively by AT&T. Long-distance rates were largely based on the revenue requirements of the local exchange carriers, both Bell System affiliates and independents. Approximately 50-60% of every long distance dollar was remitted to the local exchange arm of the business through a settlements process;

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[3]Section 254(g) also codifies pre-existing Commission policy with respect to geographic toll rate averaging, which served the same purposes as rate integration and had been developed in the same way. Specifically, geographic toll rate averaging required wireline interexchange carriers such as AT&T and MCI to offer the same rates throughout their service area, thus protecting rural subscribers from bearing the full burden of the higher common line recovery costs in those areas. See, e.g., Report and Order, CC Docket 96-61, FCC 96-331 (August 7, 1996) (Section 254(g) Order").

[4]See, e.g., In re Integration of Rates and Services, 61 FCC 2d 380, 392 (1976).

[5]Thus, for example, the Guam/Northern Marianas Working Group suggested that the Universal Service Joint Board working to reform universal service policies address whether explicit support mechanisms for rate integrated services will be necessary. See Section 254(g) Order, para. 64.

these dollars operated to subsidize local rates. After divestiture, the Commission sought to maintain this economic equilibrium, prevent uneconomic bypass, and preserve universal service through a system of access charges.[6] The level of these access charges then became a determining factor in setting long distance rates. Since long distance rates retained their role in subsidizing local rates, rate integration of long distance rates was required to keep local rates low.

Specifically, in order to maintain low local rates in rural, insular or offshore areas of the U.S., a larger amount of subsidy was needed in those areas since local costs were higher. Raising long-distance rates in those areas to cover that subsidy would have defeated the purpose – customers of basic telephone exchange and long-distance service would have seen their overall bill rise. The answer was to "integrate" offshore points into a national rate schedule, and require that schedule to reflect the average cost of nationwide long-distance service, not the costs of serving a particular customer or area. Thus, as cost and prices decrease in urban areas, the benefits of those cost decreases can also be shared with customers in rural and offshore areas.

This policy answer persists today. As the Commission noted in the Order adopting rules pursuant to Section 254(g), its rate integration and rate averaging rules incorporate existing policies.[7] These policies address the "disproportionate burdens associated with common line recovery costs" in rural areas, and ensure that "the benefits of growing competition for interstate interexchange telecommunications services... are available throughout our nation."[8] In fact, the legislative history is exceedingly explicit and makes clear that, as for rate integration, Congress intended the Commission to codify the policies contained in a 1976 Commission proceeding.[9]

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[6]See, e.g., MTS/WATS Market Structure, 97 F.C.C.2d 834, 882-883 (1984).

[7]Section 254(g) Order, para. 52.

[8]Id., para. 6.

[9]"Telecommunications Act of 1996," Conference Report, Rep. No. 104-458, 104th Cont., 2nd Sess at 132.

Cellular service was initiated in the early 1980's. Cellular service was licensed, networks built, and service provided through geographic areas separate and distinct from those relevant to local or long-distance telephone service, including the LATA boundaries which were, at the time, a very important boundary for distinguishing local from long-distance service.[10] Since these areas were often larger than the LEC telephone exchange boundary, a call between two points that, for a landline call would be considered interexchange, was considered a "local" cellular call. At the same time, since it was interconnected with the public switched telephone network, cellular subscribers could use the facilities of long-distance carriers to make calls between more distant points. Even so, the FCC ruled that cellular carriers were not interexchange service providers, and consequently may not be required to pay the interstate access charges assessed on IXCs.[11]

All of these principles continue to hold true for cellular providers, as well as newer providers of mobile telephony such as PCS and ESMR, now all grouped under the general category of CMRS. The Commission continues to consider CMRS as a distinct service from interstate, interexchange services, and CMRS providers are subject to different forms of regulation. For example, the Commission has determined that CMRS carriers interconnect with the PSTN through negotiated arrangements, do not pay the access charges assessed on long-distance carriers, and should contribute to universal service goals only through explicit mechanisms. On the other hand, interstate, interexchange carriers are required to pay access charges, although the Commission has implemented a schedule to transition to new methods of local exchange cost recovery and universal service.[12] And although the Commission has continued to examine the interstate,

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[10]See, e.g., Cellular Communications Systems, 89 F.C.C.2d 58, 68 (1982).

[11]See, e.g., MTS/WATS Market Structure, 97 F.C.C.2d 834, 882-883 (1984).

[12]See, e.g., Local Competition Order, para. 1015; Iowa Utils. Bd. et. al. v. FCC, No. 96-3321 (8th Cir., decided, July 18, 1997)(upholding FCC rules governing LEC-CMRS interconnection); see generally CC Docket 96-45 (Universal Service) and CC Docket No. 96-262 (Access Charge reform).

interexchange marketplace in a number of proceedings, none of these proceedings has discussed or concerned CMRS carriers service or rates.[13]

CMRS carriers operate in a competitive market, and the Commission has recently taken steps to further promote competition among these service providers, for example licensing geographic area SMR systems on an MTA basis, similar to many of the PCS licenses.[14] Each CMRS carrier operates in a competitive market, and the Commission has observed that competition is driving carriers to develop innovative service packages that expand the geographic range of service plans, and/or bundle services including network access, airtime, and resold services of long-distance carriers together for a single price.[15]

DISCUSSION

This historical background demonstrates that the Reconsideration Order was incorrect insofar as it applied a rate integration requirement to CMRS. For the first time, CMRS providers apparently must identify some aspect of their service as a separate interstate, interexchange service, and offer that service on an integrated basis across all "affiliates," although CMRS providers need not integrate it with their "other interstate, interexchange services." Effectively, the Commission requires all CMRS providers who are commonly owned or controlled – a good portion of the industry – to agree on a single price to be charged in every state for each interstate, interexchange service they offer, without any guidance as to how the admittedly ambiguous term "interstate, interexchange services" are to be applied to CMRS.

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[13]See generally, "Policy and Rules Concerning the Interstate, Interexchange Marketplace," CC Docket No. 96-61, Order on Reconsideration, FCC 97-293 (August 20, 1997)("Detariffing Recon. Order"); "Regulatory Treatment of LEC In-Region Interexchange Services," CC Docket No. 96-149, Second Report and Order, FCC 97-142 (April 18, 1997)(product market definition for interstate, interexchange services)("LEC In-Region Interexchange Services Order").

[14]See generally "Competition in Commercial Mobile Services," Second Report (March 25, 1997)("Second CMRS Competition Report").

[15]Second Competition Report, at 14.

The Commission should therefore reconsider this decision and not apply the rate integration rules to CMRS. Congress explicitly intended to codify prior FCC policy and cites a specific FCC decision; neither Congress nor the FCC's prior decisions ever addressed the question of rate integration for CMRS. Thus, the Commission's Report and Order implementing Section 254(g) does not mention CMRS. The reason these rules never applied to CMRS is that application of these rules to CMRS is unnecessary to achieve the statutory goal identified by Congress.

In the alternative, the Commission should reconsider the Order in at least two respects:

1) The Commission should reconsider its definition of "affiliate." Application of the rate integration rules across affiliates as implied by the Order would lead to anticompetitive and legally untenable results;

2) The Commission should also clarify the term "interstate, interexchange services" as applied to CMRS in order to require that CMRS only integrate the rates used to calculate the long distance portion of a call when they choose to identify a discrete charge as a long distance charge.

I. The Rate Integration Requirement Need Not Apply to CMRS Carriers

Section 254(g) applies to the rates of a "provider of interstate interexchange telecommunications services." The Reconsideration Order finds that this phrase is ambiguous, and seeks to interpret in a the way that best comports with its prior rate integration policy. Notwithstanding the fact that neither the term "interstate interexchange service provider" nor the Commission's prior rate integration policy were thought to cover CMRS, the Commission apparently extends the rate integration policies to CMRS.

Given the history of the rate integration rule and the context in which it was adopted, it is far more logical to interpret this ambiguous language to exclude CMRS. Congress made it explicitly clear that it intended to codify prior policy, going so far as to

cite a particular FCC decision.[16] That FCC decision did not discuss CMRS; indeed it predates the first cellular systems by nearly ten years. Since Congress intended that the Commission codify prior policy, and since that prior policy did not require CMRS carriers to provide services under an integrated schedule, Congress did not intend that the Commission now apply the rate integration rule to CMRS.

In fact, the Commission seems to believes that Congress intended to do more than simply codify the earlier policy – the Commission now seeks to "newly extend" it to all interstate, interexchange telecommunications services.[17] But no such "new extension" to apply the rate integration rule to CMRS was likely intended, because CMRS providers are not "interexchange carriers" as that term is understood by Congress, the Commission or the industry.

A. *CMRS Carriers Are Not "Providers of Interstate, Interexchange Services" Within the Meaning of Section 254(g) or the Commission's Rate Integration Policy*

First, although the Commission appears to believe in the Reconsideration Order that Congress intended to extend the rate integration rule to CMRS, nowhere in the Order implementing Section 254(g) does the Commission mention CMRS.[18] Rather, the issue seems to have arisen only because it was briefly discussed in a petition filed by GTE.[19] CMRS carriers are considered a separate class of carriers, and a separate economic interest group, from "providers of interstate, interexchange services."[20] Judging by the

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[16]"Telecommunications Act of 1996," Conference Report, Rep. No. 104-458, 104th Cont., 2nd Sess at 132, citing "Integration of Rates and Services," 61 F.C.C.2d 380 (1976).

[17]Reconsideration Order, para. 13.

[18]See generally Section 254(g) Order. CMRS carriers are also not mentioned anywhere in the regulatory flexibility analysis assessing the administrative burden of these regulations on industry.

[19]See, e.g., Reconsideration Order, para. 6.

[20]The Commission considers CMRS providers as distinct from "interexchange service providers" for purposes of interest group representation, e.g., on the Board of Directors of the Universal Service

fact that only a single cellular provider participated in the comment cycle preceding the implementing Order, no one in the industry believed that the rate integration rule applied to CMRS either.

As a legal matter, the Commission has explicitly found that CMRS carriers are not interexchange carriers.[21] It has continuously regulated CMRS carriers differently from other "providers of interstate, interexchange services," with regard to other policies and rules such as access charges. Likewise, under equal access balloting rules incumbent LECs are not required to list CMRS carriers on an equal access ballot.[22] When the Commission considered the product market definition for "domestic, interstate, interexchange services," CMRS carriers were mentioned nowhere.[23] And when the Commission considered the issue of detariffing for non-dominant interexchange carriers – an issue of significant concern to proponents of the rate integration rules – CMRS carriers were also never discussed.[24]

In short, for sound public policy reasons the Commission has previously concluded that CMRS carriers are not "providers of interstate, interexchange services." It is therefore arbitrary and inconsistent to determine that CMRS carriers are now "providers of interstate, interexchange services" for purposes of the rate integration rules. And it is particularly arbitrary given the Commission's express statement that it was implementing Congressional intent to codify a previous policy that did not impose a rate integration requirement on CMRS.

Administrator. See Report and Order and Second Order on Reconsideration, CC Docket No. 97-12, CC Docket No. 96-45, FCC 97-253 (released July 18, 1997), para. 35.

[21]See MTS/WATS Market Structure, 97 F.C.C.2d 834, 884 (1984).

[22]See, e.g., Memorandum Opinion and Order, 101 FCC 2d 911; recon. 101 FCC 2d 935 (1985).

[23]See, e.g., LEC In-Region Interexchange Order, para. 50, para. 97.

[24]See, e.g., "Policy and Rules Concerning the Interstate, Interexchange Marketplace," Order on Reconsideration, CC Docket No. 96-61, FCC 97-293 (August 20, 1997).

B. *Application of Rate Integration To CMRS Carriers Is Unnecessary To Serve The Policy Goals of Rate Integration*

Moreover, application of rate integration to CMRS has never been necessary to serve the policy goals of rate integration. The rate integration rule serves two functions: 1) it enables subscribers in less competitive rural and offshore areas to obtain some of the benefits of rate decreases created by competitive pressures on access charges and long-distance rates in more urban areas, and 2) it protects customers in those areas from bearing the full burden of higher local exchange costs, primarily common line costs. Neither of these goals will be advanced by applying the rate integration rule to CMRS.

Rate integration for CMRS as described in the Reconsideration Order is not necessary to ensure that subscribers in offshore points share the benefits of CMRS competition with subscribers in offshore points. The rate integration rule assumes that the level of competition differs substantially between offshore and urban areas - a true assumption with respect to access services.[25] But competition for CMRS services is far more evenly distributed, and sufficiently robust to protect customers from any unreasonable rate increases.[26] Moreover, the Commission has recently issued new licenses for competitive broadband PCS and other CMRS services in offshore areas, including Hawaii, Alaska, Guam, Puerto Rico and American Samoa. There is not, and has never been, any issue with respect to an offshore/continental rate disparity for CMRS services.

Application of the rate integration rule to what the Commission refers to as "other interstate, interexchange services" provided by CMRS carriers would not achieve the intended goals. The long distance services of CMRS are an ancillary source of revenue and are often bundled in with airtime charges. Even where a CMRS customer's call

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[25]The primary reason for differences in the rates of interstate, interexchange services between offshore and mainland points is the level of access charges paid by "providers of interstate, interexchange services."

[26]As discussed below, "local" and "long-distance" in CMRS are not meaningful distinctions. "Long-distance" in CMRS is not a separate service; even where a CMRS carrier essentially resells the long-distance services of another carrier, the charges may be simply bundled in with a package or provided at highly competitive rates to encourage the use of airtime.

requires the use of a resold long-distance service, the customer's bill reflects both a toll charge and an airtime charge. Thus, integrating the separate "interstate, interexchange services" of CMRS carriers will provide no benefits to offshore customers, since the rates paid by the end user will vary anyway. The only alternative would be for CMRS carriers to provide a single rate for all services on an integrated basis, something which the Reconsideration Order makes clear was not required by the rate integration policy.[27]

Second, application of the rate integration rule is unnecessary to protect customers in rural and offshore areas from paying the full burden of higher local exchange costs in those areas. Rate integration was thought to be necessary to maintain long-distance rates low enough to ensure adequate demand for those services, and thus an adequate contribution to universal service. If long-distance rates were high in offshore points, usage would be lower, and per-minute access charges would need to be even higher to meet LEC revenue requirements.

But CMRS carriers do not pay access charges, and therefore have no incentive to charge higher rates in rural and offshore areas where access charges are higher. Consequently, customers in these areas will not pay more for CMRS service absent rate integration. Moreover, subsidy support for local rates in those areas will not be threatened because any increases in CMRS service rates in those areas will simply lead to less demand for that carrier's service, loss of market share for the CMRS carrier, and will have absolutely no effect on LEC revenues or universal service.[28]

C. CMRS Services Are An Awkward Fit For the Rate Integration Rule

The Reconsideration Order's attempt to distinguish between various services offered by CMRS provider shows the awkward fit of the rate integration rule to CMRS services. CMRS carriers do not offer separate and distinct "interstate, interexchange

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[27]See Reconsideration Order, para. 18.

[28]This will be even more true as the Commission transitions to explicit universal service subsidies.

services" which can be offered under an integrated schedule, at least not without seriously dampening customer choice and competitive pricing. The mileage band rate structure traditionally used by carriers to offer geographically averaged rates is not generally used by CMRS carriers and no other method of compliance has been proposed.

As Congress recognized in 1993, CMRS services "by their nature, operate without regard to state lines."[29] While some CMRS calls cross state or LEC exchange boundaries, CMRS services are not structured with regard to those boundaries. Consequently, when the Commission inaugurated PCS service, it rejected the proposal to base license areas on LATA boundaries. While some parties had argued that those boundaries were important to establish a distinction between "local" and "long distance" services, the Commission found that larger license areas would better facilitate the goals of efficient wireless services such as regional and national roaming, and spectrum coordination. Distinctions between "local" and "long distance" were not discussed.[30]

CMRS customers instead purchase a single service -- the ability to place calls to anywhere on the PSTN (or to other mobile terminals) while on the move. The best that can be said is that CMRS service offers the ability to make "interstate, interexchange" calls in either of two ways: 1) the large geographic scope of a CMRS calling area enables a customer to place an interstate call which also crosses LEC exchange borders; this call is charged at the same rate as a "local" CMRS call, or, 2) a CMRS customer can place an interstate that crosses LEC exchange borders, and that the CMRS provider carriers to its termination through use of a long distance carrier's service. But whether the CMRS carrier terminates the call within its service area or leases the facilities of another, charges are generally independent of distance.

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[29]H.R. Rep. No. 111, 103rd Cong., 1st Sess., at 260 (1993), *reprinted in* 1993 U.S.C.C.A.N. 378, 587.

[30]See, e.g., "New Personal Communications Services," Second Report and Order, GEN Docket 90-314, FCC 93-451 (October 22, 1993).

A long distance carrier's service may be effectively resold to a CMRS end user, but not necessarily as a separate service. CMRS carrier often simply purchase capacity and then recover those costs through monthly access fees, per-minute rates, or packages of minutes. As the Commission has found, the provision of this "interexchange service" is often an integral part of the CMRS offering and cannot be carved out separately.[31]

The Reconsideration Order requires CMRS carriers to provide "the interstate interexchange CMRS service on an integrated basis in all their states," but it does not require "interexchange CMRS" to be offered under the same rate schedule as "other interstate interexchange services."[32] It is nearly impossible to tell what this guidance means for CMRS carriers who offer a single, unique service which operates without regard to exchange boundaries. AirTouch suspects that this distinction between "interexchange CMRS," and "other interexchange services," i.e., those in which resold long distance service is provided, is the distinction the Commission attempted to draw in the Reconsideration Order, between "interexchange CMRS" and "other interexchange," but it is an unworkable distinction.

It is impossible to determine which rates for which service should apply to a given CMRS phone call, particularly since a mobile customer may be placing a "local" call which becomes "interstate," or "interexchange," during the course of a call. Moreover, even where a CMRS customer's call requires the use of a resold long-distance service, the customer's bill reflects both a toll charge and an airtime charge. As discussed before, if the integration rule requires a CMRS provider to integrate only its toll charges, customers

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[31]See "Customer Proprietary Network Information," Notice of Proposed Rulemaking, CC Docket No. 96-115, FCC 96-221, para. 22 (rel. May 17, 1996); "BOC Out-of-Region Interstate, Interexchange Service," CC Docket No. 96-21, Report and Order, FCC 96-288, paras. 42-44 (rel. July 1, 1996); see also Statement of Senator Breaux Regarding Passage of the 1996 Act, 141 Cong. Rec. S1311 (Feb. 26, 1996). Other carriers often use "through routes," "unbundled network elements," or resale arrangements where the services of other carriers are purchased wholesale and then used to provide an end-user service. The Commission does not consider this to be two segregable services; the CMRS arrangement is no different.

[32]Reconsideration Order, para. 18.

in different states will still pay different rates for similar calls because of variances in airtime charges.

On the other hand, if the integration rule requires both toll and airtime charges to be integrated, CMRS providers will plainly be offering both "services" under the same rate schedule. That result, the Commission found, was not required by the rule.[33] The best resolution to this awkward result is to simply determine that the rate integration rule does not apply to CMRS services. The Commission has discretion to interpret an admittedly ambiguous term, and it should do so consistent with its prior rate integration policy which Congress intended to codify. Since that prior policy did not address CMRS, there is no need to shoehorn CMRS into the rule now, particularly since the only noticeable result will be a reduction in price competition and pricing options for CMRS subscribers.

II. Application of the Rate Integration Rule Across All CMRS "Affiliates" Creates Anticompetitive and Legally Untenable Results

Another salient aspect of the Reconsideration Order was its determination that the rate integration rule applies across "affiliates," and to define "affiliate" using the Part 32 definition applicable to wireline LECs. The Reconsideration Order provides that affiliates that are under common ownership and control must integrate rates across affiliates, as was the case under the prior rate integration policy.[34] Application of this "affiliate" rule to CMRS will have myriad consequences, all of which were likely unintended by the Commission. Application of this rule to CMRS will disrupt many of the existing CMRS ownership and operating arrangements and make it extremely difficult, if not unlawful, for CMRS carriers to comply with the rule.

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[33]See, e.g., Reconsideration Order, para. 18; Id., para. 11 (Hawaii notes that rate integration applies only to individual services).

[34]See Reconsideration Order, para. 17. 47 C.F.R. § 32.9000 provides that companies are affiliated when directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the accounting company. "Control" means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, by any means.

A. *Application of the Rate Integration Rule Will Disrupt Business Relationships, Create Antitrust Exposure, and Anticompetitive Results*

Many cellular, PCS or other CMRS providers operate, or will operate, as partnerships. The affiliate rule will effectively require each such partnership to charge the interstate, interexchange rate charged by the controlling partner in that partner's other markets even if the non-controlling partners believe that a different price is warranted in their market in response to competitive pressures. But if all owners of partnership shares are considered "affiliates" for that market, then they are also considered "affiliates" for other markets, even though they may be competitors in that other market. And the broad definition of "control" adopted in the Reconsideration Order also means that the rate integration requirement may apply between two partners where one partner holds a non-controlling equity interest, but serves as the partnership's manager.

For example, AirTouch and AT&T Wireless jointly own a partnership which controls the Cellular One cellular provider for San Francisco, but are competitors in Los Angeles. By virtue of the "affiliate" rule, the Cellular One carrier would be required to integrate its long distance rates with those of AT&T Wireless' other CMRS businesses, i.e., those with which it shares a common controlling owner. But the Cellular One carrier would also be required to integrate its rates with those of AirTouch's other CMRS partnerships. Thus, any competition on price in Los Angeles would violate the rate integration rule. At the same time, AirTouch and AT&T 's arrangements to fix the price of service for a particular market would create unacceptable antitrust exposure.

Perhaps a more extreme example is AirTouch's involvement in PCS PrimeCo. Here, carriers which are "affiliated" for one business arrangement in PCS are separate competitors for cellular service. PrimeCo is owned by two partnerships, each with a 50 percent interest, neither of which is a telecommunications carrier. Each of these partnerships is "controlled" by its partners: AirTouch, BellAtlantic/Nynex Mobile, and US WEST/New Vector. Extending the rate integration requirement to require PrimeCo to

charge the same prices for interstate toll services that are charged by its controlling parents would be extremely anticompetitive and raise obvious antitrust implications.

Of course, the problem does not end there. As with AirTouch and AT&T Wireless, Bell Atlantic and US WEST/New Vector would be required to integrate their rates in order to ensure that PrimeCo's rates were integrated with its controlling owners. But in other markets, such as Tucson, AZ, Bell Atlantic and US WEST are competitors. And those CMRS carriers are affiliated with other carriers through partnerships, which would lead to further "integration" of rates across the CMRS industry.

The anticompetitive effects would even extend into the long-distance market, since competing wireless carriers almost always provide their customers with resold long-distance. Applying the rate integration rule across affiliates so as to foreclose competitive pricing in the downstream CMRS long-distance market would certainly also stifle competition between facilities-based long-distance carriers in the upstream market for long-distance resale. The extent of the anticompetitive effects, and the antitrust exposure problems, are significantly severe to warrant reconsideration of this Order.

B. The Commission Should, At A Minimum, Revise Its Definition of "Affiliate" and "Control"

The Reconsideration Order's strict application of "affiliate" and "control" tests appears to be based on concerns with possible manipulation of affiliate relationships to evade the rate integration rule. Notably, the Rural Telephone Coalition, who lobbied for Section 254(g)'s inclusion in the 1996 Act, and represents many of the very carriers Section 254(g) is intended to protect, states that legitimately separate affiliates should not be required to integrate rates.[35] And it is hard to imagine two "affiliates" who are more legitimately separate than those who compete against one another in certain markets.

[35] Reconsideration Order, para. 7, n.25.

The Commission can meet its concerns about manipulative evasion of Section 254(g) without placing carriers in a legal conundrum and thwarting competition. AirTouch proposes that, at a minimum, the Commission reconsider its definition of "affiliate" to provide that only entities which are identically owned by a single carrier would be considered "affiliated," and must integrate their interstate, interexchange rates. The Commission's Order suggests that this was the intended result - not the extensive restriction of price competition across the telecommunications industry.

For example, the Reconsideration Order expresses concern that a single carrier could use or create multiple interexchange carrier subsidiaries, each serving a separate geographic area, to evade the rate integration rule.[36] Under AirTouch's proposed clarification, where such entities are each owned by a single carrier, they would continue to be required to integrate rates for their interstate, interexchange services. But entities who are jointly owned or controlled would not create an "affiliate" relationship between their joint owners, or between a partnership manager and that manager's other owned or controlled entities. Only carriers who are identically owned, and serve separate geographic areas, would be required to integrate rates across different states. This proposal, while not perfect, at least demonstrates that there are alternatives that will minimize the extraordinarily anticompetitive effects of the approach adopted in the Reconsideration Order.

III. The Commission Should Clarify the Term "Interstate, Interexchange Services" As Applied to CMRS

As noted above, CMRS services "by their nature, operate without regard to state lines." Unlike wireline customers who use separate carriers for local exchange and interexchange service, CMRS customers instead purchase a single service, making identification of a single "interstate, interexchange CMRS service" impossible. In some cases, of course, a CMRS customer will place an interstate, interexchange call which is

[36]See Reconsideration Order, para. 15.

carried not entirely on the CMRS providers network, but partially through use of a long distance carrier's service. Although the long distance component is not a distinct service, and the cost of this resold long distance may simply be recovered through a package rate, in some cases, the CMRS carrier will indicate to the customer that there is a discrete charge for the use of these long distance services.

If the Commission believes it must subject CMRS services to the rate integration policy, AirTouch asks that the Commission clarify that all that is required to comply with the rule is that, where there is a discrete charge associated with resold long distance service, those charges must be uniform in each state in which the CMRS carrier provides service. Although even this approach will necessarily limit the freedom of AirTouch's affiliated partnerships to price competitively, it best gives meaning to the Commission's conclusion that CMRS carriers are not required to integrate rates across services.[37]

CONCLUSION

AirTouch respectfully requests that the Commission reconsider its application of rate integration rules to CMRS. Congress intended to codify a prior policy approach that clearly did not apply to CMRS. Consequently, the rate integration provision of the statute should not be applied to CMRS. Application of the rate integration rule in fact achieves none of the statutory goals and has significantly anticompetitive consequences. Alternatively, the Commission should reconsider its definition of "affiliate," and clarify that CMRS providers need only integrate their rates for discrete long-distance charges identified separately on a customer's bill.

[37] See Reconsideration Order, para. 18.

Respectfully submitted,

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October 2, 1997

CERTIFICATE OF SERVICE

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